

MONTGOMERY COUNTY CODE
Chapter 8A

Chapter 8A. CABLE COMMUNICATIONS.*

- § 8A-1. Title.
- § 8A-2. Intent and purposes.
- § 8A-3. Definitions.
- § 8A-4. Grant of authority; franchise required.
- § 8A-5. Franchise characteristics.
- § 8A-6. Franchisee subject to other laws, police power.
- § 8A-7. Interpretation of franchise terms.
- § 8A-8. Application for grant, renewal, modification or transfer of a franchise.
- § 8A-9. Grant of franchise.
- § 8A-10. Insurance; bond; indemnification.
- § 8A-11. Minimum facilities and services.
- § 8A-12. Franchise fee.
- § 8A-13. Reports and records.
- § 8A-14. Customer service requirements.
- § 8A-15. Service discrimination and exclusive programming agreements prohibited.
- § 8A-16. Subscriber privacy and unauthorized reception.

*Editor's note—Section 1 of FY 1991 L.M.C., ch. 3, amended ch. 8A to read as set out in §§ 8A-1—8A-32. The chapter formerly consisted of §§ 8A-1—8A-22 and was derived from the following: 1981 L.M.C., ch. 9, § 1; 1982 L.M.C., ch. 20, §§ 1—6; 1983 L.M.C., ch. 22, § 13, and ch. 47, §§ 1—13; and 1984 L.M.C., ch. 24, § 11, and ch. 27, § 10. Section 2 stated that the act superseded Executive Reg. No. 20-83, with the chairmanship of the former advisory committee determined as of the effective date of this act. Section 3 made the act applicable to existing franchises. Section 4 authorized amendment of the articles of incorporation or bylaws of Montgomery Community Television, Inc., without County approval, subject to § 8A-32.

§ 8A-17. Construction and use of rights-of-way.

§ 8A-18. Technical standards.

§ 8A-19. Security deposit.

§ 8A-20. Enforcement remedies.

§ 8A-21. Performance evaluations.

§ 8A-22. Renewal of franchise.

§ 8A-23. Transfers.

§ 8A-24. Revocation or termination of franchise.

§ 8A-25. County purchase of cable system; eminent domain.

§ 8A-26. Continuity of service mandatory.

§ 8A-27. Unlawful solicitation or acceptance of gifts.

§ 8A-28. Use of cable funds; Cable Communications Plan.

§ 8A-29. Administration.

§ 8A-30. Municipal participation.

§ 8A-31. Cable Communications Advisory Committee.

§ 8A-31A. Cable Compliance Commission.

§ 8A-32. Community access organizations.

Sec. 8A-1. Title.

This Chapter is known and may be cited as the "Cable Communications Law." (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-2. Intent and purposes.

It is the intent of the County to promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system; to provide for the regulation of each cable system by the County; to provide for the payment of fees and

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-2

other valuable consideration by a franchisee to the County for the privilege of using the public rights-of-way for constructing and operating a cable system; to promote the widespread availability of cable and other communications service to County residents and businesses wherever economically feasible, including to those who reside in multifamily buildings and in rural communities; to encourage the development of cable as a means of communication between and among the members of the public and public institutions; and to encourage the provision of diverse information to the community over cable. (FY 1991 L.M.C., ch. 3, § 1; 2002 L.M.C., ch. 31, § 1.)

Editor's note—2002 L.M.C., ch. 31, §§ 2, 3 and 4, state:

Sec. 2. Service-level requirements for cable modem service. The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect [March 6, 2003]. Section 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law [December 5, 2002].

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date. This Act expires on December 31, 2005.

Sec. 8A-3. Definitions.

In this Chapter, the following words and phrases have the meanings indicated in this Section. Words defined in Section 602 of the Cable Act have the meaning stated in the Cable Act unless this Section provides a different definition.

Access channel means any channel set aside under the franchise agreement for public use, educational use, or governmental use without a charge by the franchisee for channel usage. An access channel may be scheduled on a professional basis or may be operated so that any member of the general public may cablecast.

Application means a proposal to construct and operate a cable system within the County, transfer a franchise, renew a franchise, or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

Cable Act means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq.

Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within the County. This term does not include:

MONTGOMERY COUNTY CODE
Chapter 8A

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way;
- (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that the facility will be considered a cable system to the extent that it is used in the transmission of video programming directly to subscribers; or
- (4) any facilities of any electric utility used solely for operating its electric utility systems.

Cable service means the one-way transmission of video or other programming service to subscribers and any subscriber interaction provided in connection with that service.

Commission means the Cable Compliance Commission.

Community access organization means a nonprofit corporation that provides services to:

- (1) support the production of local programming or the operation of local access channels, or both;
- (2) serve viewers as well as program producers; and
- (3) promote high quality productions, responsible and diverse points of view, and balance in subject matters.

Complaint means a complaint concerning cable service or any other product or service.

Control of a franchisee or applicant means the legal or practical ability to direct the affairs of the franchisee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.

County means Montgomery County, Maryland, except for the territory located in the municipalities of Barnesville, Brookville, Chevy Chase Village, Chevy Chase Section 3, The Town of Chevy Chase, Chevy Chase Section 5, Gaithersburg, Garrett Park, Glen Echo, Kensington, Laytonsville, Poolesville, Rockville, Somerset, Takoma Park, and Washington Grove.

Council means the County Council.

County Executive means the chief executive officer of the County or designee.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-3

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time but with no value allocated to the franchise itself.

FCC means the Federal Communications Commission.

Franchise means the right granted by the County to a franchisee to construct, maintain and operate a cable system over, on, or under streets, roads and all other public ways, easements and rights-of-way within all or specified areas of the County. The term does not include any license or permit that may be required by this Chapter or other laws, ordinances, or regulations of the County for the privilege of transacting and carrying on a business within the County or for disturbing the surface of any street or public thoroughfare.

Franchise agreement means a contract entered into in accordance with the provisions of this Chapter between the County and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

Franchisee means any person granted a franchise under this Chapter.

Gross revenues means all revenues derived by a franchisee from the operation of its cable system in the County, including revenues derived from cable service, home shopping channels, institutional services, rental or lease of equipment, installation fees, or ancillary services.

Institutional services means video, audio, data, and other transmission services provided by a franchisee to institutional users on an individual application, private channel basis, including two-way video, audio, or digital signals among institutions, or from institutions to residential subscribers.

Leased access channel means a channel designated in accordance with Section 612 of the Cable Act, for commercial use by persons unaffiliated with the franchisee.

Other product or service means any product or service that is not a cable service but uses any facility or equipment constructed, installed, maintained, operated, or occupying the public rights-of-way under a franchise issued under this Chapter, notwithstanding how the service or product is characterized or regulated under federal law. *Other product or service* may include one-way or interactive video, audio, data (including cable modem), and information services.

Overbuild means a cable system constructed to serve any subscribers served by an existing cable system, including those parts of an existing system that will be constructed and activated by December 31, 1989 pursuant to a staging map filed with the County.

Participating municipality is a municipality that enters into an agreement with the County under which the County will administer a cable franchise granted by the municipality.

MONTGOMERY COUNTY CODE
Chapter 8A

Person means any individual, corporation, partnership, association, joint venture, or organization of any kind and the lawful trustee, successor, assignee, transferee, or personal representative thereof.

Subscriber means any person who legally receives any cable service or other product or service provided by a franchisee, but does not include persons who receive not more than two channels of non-commercial closed circuit video service which is not made available to the general public.

System malfunction means an equipment or facility failure that results in the loss of satisfactory service on one or more channels. A malfunction is a *major malfunction* if it affects 11 or more subscribers.

Transfer of a franchise means any transaction in which:

- (1) an ownership or other interest in a franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons so that control of the franchisee is transferred; or
- (2) the rights held by the franchisee under a franchise agreement are transferred or assigned to another person or group of persons.

Transfer of interest in a franchisee means the sale or transfer, directly or indirectly, of an existing or newly created equity interest in the franchisee that does not result in a transfer of control of the franchisee.

User means a person utilizing a cable system's facilities for purposes of transmission of material or information to subscribers or others. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 10, § 1; 2002 L.M.C., ch. 31, § 1.)

Editor's note—2002 L.M.C., ch. 31, §§ 2, 3 and 4, state:

Sec. 2. Service-level requirements for cable modem service. The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect [March 6, 2003]. Section 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law [December 5, 2002].

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date. This Act expires on December 31, 2005.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-4

Sec. 8A-4. Grant of authority; franchise required.

The County may grant one or more franchises in accordance with this Chapter. A person must not construct or operate a cable system in the County without a franchise granted by the County. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-5. Franchise characteristics.

- (a) A franchise authorizes use of the public rights-of-way for installing cables, wires, lines, and other facilities to operate a cable system, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines, or any other equipment or facilities private property without owner consent (except for use of compatible easements or rights-of-way under the Cable Act), or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners.
- (b) A franchise is subject to the paramount right of use by the County and the public for public purposes. The County reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.
- (c) A franchise is nonexclusive and does not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the County.

- (d) A franchise does not convey a property right to the franchisee or a right to renewal other than as may be required by state or federal law.
- (e) A franchise agreement constitutes a contract between the franchisee and the County once it is accepted by the franchisee. A franchisee contractually commits itself to comply with the terms, conditions and provisions of the franchise agreement and with all applicable laws, ordinances, codes, rules, regulations, and orders. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-6. Franchisee subject to other laws, police power.

- (a) A franchisee is subject to and must comply with all applicable local, municipal, County, state and federal laws, ordinances, codes, rules, regulations, and orders including those pertaining to nondiscrimination.
- (b) A franchisee is expressly subject to the County's police power under Article 25A, Section 5(S) to the Annotated Code of Maryland.
- (c) Any other provision in this Code concerning the grant of franchises does not apply to the grant of franchises for the construction and operation of cable systems. The County, in granting a franchise under this Chapter, is exempt from the provisions of Chapter 11B.
- (d) A franchisee or other person is not excused from complying with any of the terms and conditions of this Chapter or a franchise agreement by any failure of the County, one or more occasions, to require compliance or performance. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-7. Interpretation of franchise terms.

- (a) This Chapter applies to a franchise agreement as if fully set forth in the franchise agreement. The express terms of this Chapter prevail over conflicting or inconsistent provisions in a franchise agreement.
- (b) The provisions of a franchise agreement must be liberally construed in order to effectuate its objectives consistent with this Chapter and the public interest.
- (c) A franchise agreement is governed by, and construed in accordance with, the laws of Maryland. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-8. Application for grant, renewal, modification, or transfer of a franchise.

- (a) A person seeking a franchise or a current franchisee must apply to the County for a new franchise, renewal of a franchise under the formal or informal procedures in Section 626 of the Cable Act, modification of a franchise agreement, transfer of a franchise, or

MONTGOMERY COUNTY CODE
Chapter 8A

a transfer of an interest in a franchisee if the transfer is subject to County approval. An applicant has the burden to demonstrate compliance with all application requirements of this Chapter.

(b) An applicant must:

- (1) submit the number of copies of the application required by the County;
- (2) pay the application filing fee specified in regulations;
- (3) meet the requirements of any applicable request for proposals;
- (4) identify in writing the name and address of any person authorized to act on behalf of the applicant with respect to the application; and
- (5) certify to the County that the application includes all information required by this Chapter for the appropriate type of application.

(c) A person may apply for a new franchise in response to the County's request for proposals or on an unsolicited basis. The County may issue a request for proposals when the County receives an unsolicited application or at any other time. If the County elects to issue a request for proposals after receiving an unsolicited application, the applicant may submit an amended application in response to the request for proposals, may inform the County that its unsolicited application should be considered as its response to the request for proposals, or may withdraw its unsolicited application. The County may reject without further consideration an application that is unresponsive to a requirement of a request for proposals.

(d) An application for a new franchise must contain the following information:

- (1) Identification of the persons who own or control the applicant, including:
 - (A) the names, addresses, and percentage interest of the 10 largest holders of an ownership interest in the applicant and all persons with an ownership interest of 5 percent or more;
 - (B) any other persons who control the applicant;

- (C) all officers and directors of the applicant; and
 - (D) any other business affiliation and cable system ownership interest of each identified person.
- (2) A statement addressing whether the applicant, or any other person controlling the applicant, or any officer or majority stockholder of the applicant;
- (A) has been adjudged bankrupt;
 - (B) has had a cable franchise revoked; or
 - (C) has been found by any court or administrative agency to have violated a security or antitrust law or convicted of a felony or any crime involving moral turpitude.

Any statement under this paragraph must identify each person involved and explain the circumstances.

- (3) A demonstration of the applicant's technical, legal, and financial ability, including financing sources and commitments, to construct and operate the proposed cable facility, identifying key personnel.
- (4) A detailed description of the geographic area to be served by the cable system.
- (5) If the applicant seeks a limited franchise under this Chapter, a description of how the proposal meets the requirements for a limited franchise, including the justification for any waiver of the minimum requirements.
- (6) A detailed description of the physical facility proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities and equipment.
- (7) A description of the construction of the proposed system, including an estimate of above-ground and below-ground mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space on poles and conduits including an estimate of the cost of any necessary rearrangement of facilities.
- (8) A description of the services to be provided initially, including all broadcast and non-broadcast signals to be carried and all non-television services, and if

MONTGOMERY COUNTY CODE
Chapter 8A

services will be offered by tiers, identification of the signals or services, or both, to be included on each tier.

- (9) The proposed rate structure, including charges for each service tier, installation, converters, and other equipment or services.
 - (10) A demonstration of how the proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted for the County.
 - (11) Pro forma financial projections for the first 10 years of the franchise term, including a statement of income, a balance sheet, sources and uses of funds, and schedule of capital additions, with all significant assumptions explained in notes or supporting schedules.
 - (12) An affidavit of the applicant or an authorized officer that:
 - (A) certifies the truth and accuracy of the information in the application;
 - (B) acknowledges the enforceability of application commitments; and
 - (C) certifies that the proposal meets all applicable federal and state requirements.
 - (13) If an applicant proposes to construct a cable system which would constitute an overbuild, the identification of the area where the overbuild would occur, the potential subscriber density in the area to be served by competing cable systems, and other information necessary for the County to make its determination under section 8A-9(e).
 - (14) A certification that the applicant has served a copy of its application on all existing franchisees.
 - (15) Any other information necessary to demonstrate compliance with this Chapter, and any other information that the County requests from the applicant.
- (e) An application to modify a franchise agreement must include the following information:
- (1) The specific modification requested.

- (2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved.
 - (3) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, and, if so, a demonstration that the requested modification meets the legal standards of the Cable Act.
 - (4) Any other information necessary for the County to decide whether to approve the modification.
- (f) An application to renew a franchise must comply with Section 8A-22.
- (g) An application to transfer a franchise or an interest in a franchisee must comply with Section 8A-23.
- (h) An applicant must certify that the application contains all required information.
- (i) Within 10 business days after receiving an application for a new franchise for an overbuild, the County Executive must decide whether to accept or reject the application for filing.
- (1) If the Executive rejects the application for filing, the Executive must specify the additional information required to accept the application for filing. The applicant may resubmit or supplement the application with the additional information, and the Executive must reconsider, within the 10-day deadline, whether the application is acceptable for filing.
 - (2) When the Executive accepts the application for filing, the Executive must make the application available for public inspection and forward the application to the Cable Communications Advisory Committee for review and comment.

This subsection does not limit the Executive's authority to request additional information later or to recommend, based on any grounds after full review of the application, that the Council deny the application. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 18, § 2.)

Sec. 8A-9. Grant of franchise.

- (a) The County may grant a franchise for a period not to exceed 15 years to serve all or any specified geographic areas of the County.
- (b) The County may grant a limited franchise for a period not to exceed 10 years to serve a geographic area that meets both of the following criteria:

- (1) the geographic area involves no overbuild; and
 - (2) the geographic area is one where the cable will pass at the time the franchise is granted an average of fewer than 30 dwelling units per cable mile.
- (c) The County may condition the grant of a franchise on the completion of construction within a specified time or the performance of other specific obligations and specify that the failure of the franchisee to comply with the condition will void the franchise without further action by the County.
- (d) The Executive must conduct a public hearing on an application for a new franchise. The Executive must conduct the hearing on an application for a new franchise for an overbuild within 90 days after the Executive accepts the application for filing. The Executive must give public notice of the hearing at least 15 calendar days before the hearing. At the public hearing, the Executive may accept written and oral testimony and any other material relevant to the application. The Executive may consider multiple applications in a single proceeding.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-9

- (e) In evaluating an application for a new franchise, the County must consider:
 - (1) the applicant's character;
 - (2) the applicant's technical, financial, and legal qualifications to construct and operate the proposed system;
 - (3) the nature of the proposed facilities, equipment, and services;
 - (4) the applicant's record of cable performance in other communities, if any; and
 - (5) whether the proposal will serve the public interest.
- (f) Where an applicant proposes to overbuild an existing cable system, the County must consider the factors in subsection (e) and:
 - (1) the beneficial effects of competition, including any reduced rates to consumers, higher technical standards, or more varied programming offerings; and
 - (2) the effect of the overbuild on the public.
- (g) The Executive must propose to grant or deny the franchise application and must notify the applicant of the proposed action. Before proposing action, the Executive must consider the application, the written and oral testimony and other material presented at the hearing, and any other information relevant to the application. For an application for a new overbuild franchise, the Executive must make the proposal within 120 days after accepting the application for filing.
- (h) If the Executive proposes to grant a franchise application, the Executive and the applicant must agree on the terms of a franchise agreement within 60 days after the applicant receives the notice of the proposed grant. The Executive and the applicant may extend this period for up to 60 more days. If the two parties do not reach agreement by the end of the original or any extended period, the notice of proposed grant is void.
- (i) As required by State law, the County must advertise the terms of a proposed franchise agreement, including the proposed compensation to the County, for three successive weeks in one or more newspapers of general circulation in the County to allow the public to comment on the proposed franchise agreement.
- (j) If the Executive and the applicant agree on a proposed franchise agreement, the Executive must submit the proposed agreement to the Council for approval. For an application for a new overbuild franchise, the Executive must submit the proposed franchise agreement to the Council within 10 days after the end of the advertising period.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-9

- (k) (1) When the Executive submits a proposed franchise agreement to the Council for approval, the Council may, within the applicable time provided in Section 8A-29(d):
 - (A) grant the franchise;
 - (B) grant the franchise with conditions, which may modify or override any provision of the proposed franchise agreement;
 - (C) remand the franchise agreement to the Executive with specific recommendations to renegotiate any provision of the proposed franchise agreement and submit a revised agreement to the Council for approval; or
 - (D) deny the application for a franchise.
- (2) If the Executive proposed to deny the franchise application or cannot reach agreement with the applicant on a proposed franchise agreement within the time specified in subsection (h), the Executive immediately must recommend to the Council that the Council deny the application and explain the reasons for the recommendation. The Council may, within the applicable time provided in Section 8A-29(d):
 - (A) deny the application;
 - (B) remand the franchise application to the Executive with recommendations or instructions for further action; or
 - (C) grant the franchise with any conditions that the Council determines are necessary to protect and promote the public interest.
- (l) Every franchise grant is subject to a franchise acceptance fee in an amount not exceed the County's costs to consider the application, less the amount of the filing fee. Within 30 days after the Council grants a franchise under this Chapter, the County must notify the approved applicant of the amount of the franchise acceptance fee and how the County calculated the amount. If the approved applicant does not pay the franchise acceptance fee within 30 days after the County notifies the applicant, the grant is void. The franchisee must not act under the franchise until the franchisee complies with the bond, insurance, and other prerequisites of the franchise agreement. (FY 1991 L.M.C., ch. 3, § 1; 1993 L.M.C., ch. 15, § 1; 1998 L.M.C., ch. 18, § 2.)

Sec. 8A-10. Insurance; bond; indemnification.

- (a) A franchisee must have the following insurance coverage in force at all times during the franchise period:
 - (1) workmen's compensation insurance to meet all state requirements;
 - (2) general comprehensive liability insurance;
 - (3) automobile liability insurance covering all vehicles as specified in the franchise but not less than \$250,000 per person, \$500,000 per occurrence, and \$100,000 for property damage; and
 - (4) any additional types of insurance and coverage amounts as the County may require.

All insurance policies must be with sureties qualified to do business in Maryland and in a form approved by the County Attorney. The County may accept a self-insurance plan that assures comparable protection in lieu of these insurance policies.

- (b) To ensure the franchisee's performance of franchise obligations, a franchisee must have in force at all times during the franchise period a bond in a form approved by the County Attorney, consisting of cash, an irrevocable letter of credit, or a performance bond. A performance bond must be provided by a surety qualified to do business in Maryland. The bond must be to the benefit of the County or to other parties named in a franchise agreement. The bond must be of a type and in a sum specified in the franchise agreement as necessary to ensure the faithful performance and discharge of obligations imposed by law and the franchise agreement. Except for a limited franchise, the minimum bond amount must not be less than \$250,000.
- (c) A franchisee must, at its sole cost and expense, indemnify, hold harmless, and defend the County, its officials, boards, commissions, agents, and employees, against any claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising

out of the construction, maintenance, or operation of its cable system regardless of whether the act or omission complained of is authorized, allowed or prohibited by the franchise. This requirement includes claims arising out of copyright infringement or a failure by the franchisee to secure consent from the owner, authorized distributor, or licensee of a program to be delivered by the cable system.

- (d) In an overbuild situation the County may require franchisees to indemnify each other for any damage to facilities and services caused by construction or maintenance of their respective cable systems. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-11. Minimum facilities and services.

- (a) The following minimum requirements for facilities and services apply to all franchises:
 - (1) A cable system must have a minimum capacity of 54 video channels available for immediate or potential use.
 - (2) A cable system must provide at least 6 access channels, which will be individually designated by the County for public, educational or governmental access. The County may require the franchisee to contribute to capital costs for access studios and related equipment and facilities.
 - (3) A cable system must provide leased access channels as required by federal law. The franchisee must provide information on all leased access channels in its annual report under Section 8A-13(a). This information must include a description of any applications to lease access channels that are pending consideration or which have been denied by the franchisee.
 - (4) Service to all public buildings may be required without charge as set forth in the franchise agreement.
 - (5) Upon the directive of the County, a franchisee must interconnect the cable system access channels with those of other cable systems in the Washington and Baltimore metropolitan areas and Frederick County or as otherwise provided in the franchise agreement.
 - (6) A franchisee must design its system to allow the County to interrupt cable service in an emergency to deliver necessary information to subscribers.
- (b) The County may require that a franchise exceed the minimum requirements set forth in subsection (a).

- (c) The County may waive minimum requirements set forth in subsection (a) for limited franchises where the applicant demonstrates that a waiver is in the public interest. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-12. Franchise fee.

- (a) A franchisee, in consideration of the privilege granted under a franchise for the use of public rights-of-way to construct and operate a cable system, must pay the County 5 percent of the franchisee's gross revenues from the operation of its cable system within its franchise area during the period of its franchise. A franchisee must pay the franchise fee due to the County for the preceding quarter within 30 days of the end of that quarter.
- (b) Any payment of franchise fees to adjust for a shortfall in the quarterly payments for the preceding year must be made no later than the filing date for the audited annual financial statements as specified in subsection (d) of this section. An adjustment for any overpayment will be credited in one or more subsequent quarterly payments.
- (c) Unless a franchise agreement provides otherwise, a franchisee must file with the County within 30 days of the end of each quarter a financial statement showing the gross revenues received by the franchisee during the preceding quarter and the number of subscribers in each participating municipality.
- (d) A franchisee must file within 3 months of the end of its fiscal year the franchisee's annual financial statements for the preceding year audited by a certified public accountant. The franchisee will bear the cost of the preparation of all financial statements.
- (e) The County may inspect and audit any books and records, and recompute any amounts determined to be payable under the franchise. However, any audit to recompute franchise fees must take place within 12 months following the close of the franchisee's fiscal year. The cost of the audit will be borne by the franchisee if the annual payment to the County for the preceding year is increased by more than 5 percent as a result of the audit.
- (f) In the event that a franchise payment is not received by the County on or before the due date, interest will be charged from the due date at the annual interest rate then charged for unpaid federal income taxes. In addition, the franchisee will pay a late charge of 5 percent of the amount of the payment. Interest and late charges will not be imposed for any payment necessary as a result of the yearly adjustment provided for in subsection (b) of this section, if the payment to correct for a shortfall does not exceed 10 percent of the total payments made during the year. In the event such payment exceeds 10 percent of the total payments made during the year, the franchisee will be liable for interest and late charges for the entire amount due.

- (g) When a franchise terminates for any reason, the franchisee must file with the County within 90 days of the date the franchise operations stop an audited financial statement showing the gross revenues received by the franchisee since the end of the previous fiscal year. Adjustments must be made at that time for franchise fees due to the date that the franchisee's operations ceased. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-13. Reports and records.

- (a) Within 3 months of the close of its fiscal year, a franchisee must file with the County and each participating municipality an annual report that includes the information required in the franchise agreement.
- (b) A franchisee must maintain a complete set of books and records available for inspection by the County during normal business hours.
- (c) Upon written request of the franchisee and approval by the County Attorney, information of a proprietary nature submitted to the County under this Chapter or a franchise agreement must not be made available for public inspection. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-14. Customer service requirements.

- (a) A franchisee must maintain in its franchise area a business office open during normal business hours with a listed local telephone number and a sufficient number of telephone lines to allow reasonable access by subscribers and members of the public. When the business office is closed, the franchisee must have an answering machine or service to take complaints and inquiries.
- (b) A franchisee must have personnel and equipment available at all times to locate and correct major system malfunctions. Major system malfunctions must be corrected without delay. Corrective action for all other malfunctions must be initiated as provided in the franchise agreement but not later than the next business day after the subscriber service call is received. Corrective action must be completed as promptly as possible.
- (c) A franchise agreement must include procedures to investigate and resolve all complaints, including those regarding the quality of service and equipment malfunction.
- (d) A franchisee must provide each subscriber at the time cable service is installed written instructions for placing a service call, filing a complaint, or requesting an adjustment. These instructions must include the name, address, and telephone number of the County office designated to handle subscriber complaints. Each subscriber must also be provided with a schedule of the subscriber's rates and charges, a copy of the service contract, delinquent subscriber disconnect and reconnect procedures, and a description of any

other relevant franchisee subscriber policies. The County must approve all forms describing customer service policies and procedures before they are distributed to subscribers. All forms must be conspicuously posted in the franchisee's local business office.

- (e) A franchisee may interrupt service on the cable system only for good cause and, except in emergency situations, only after prior notice to subscribers and the County of the anticipated service interruption. Any interruption must be for the shortest time possible.
- (f) A franchisee must maintain a complete record of service complaints received and action taken. These records must be open to the County for inspection during normal business hours. A monthly summary of such records must be submitted to the County by all franchisees except limited franchisees. A limited franchisee must submit reports as required in the franchise agreement. Complaint records must be retained for 3 years.
- (g)
 - (1) A franchisee must promptly remove all its facilities and equipment from the subscriber's premises if service is terminated and the subscriber requests removal.
 - (2) Notwithstanding paragraph (1), a franchisee may disconnect and abandon facilities and equipment where removal is impractical, such as with buried cable or internal wiring. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-15. Service discrimination and exclusive programming agreements prohibited.

- (a) Unless approved by the County and to the extent consistent with federal law, a franchisee must not, in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, grant undue preferences or advantages to any subscriber or potential subscriber, or to any user or potential user, nor subject any of these persons to any undue prejudice or any disadvantage. A franchisee must have a uniform rate structure for its services throughout the franchise area. A franchisee must not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, religion, color, sex, sexual orientation, handicap, national origin, or martial status, except for discounts for the elderly and handicapped.
- (b) A franchisee must not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.
- (c)
 - (1) Except as provided in paragraphs (2) and (3) of this subsection, a franchisee must not enter into an agreement with a programming service or broadcast station that provides for:

- (A) the exclusive distribution or retransmission of programming by the franchisee within any area of the County; or
 - (B) a refusal by the programming service or broadcast station to deal with a competing multichannel provider in the County.
- (2) The prohibition contained in paragraph (1) may not be construed to apply to a provision in an agreement that provides for bona-fide volume discounts that are either cost-based or which otherwise would be applied equally to both affiliated or unaffiliated customers of the programming service or broadcast station.
- (3) This subsection does not apply to any agreement between a franchisee and a programming service or broadcast station entered into before July 21, 1992. It does apply to any subsequent amendments that extend the term of the agreement. Any subsequent renewal of a franchise by the County after that date must be conditioned on compliance with paragraph (1) with regard to all programming, including any agreement entered into on or before July 21, 1992. (FY 1991 L.M.C., ch. 3, § 1; 1993 L.M.C., ch. 15, § 1.)

Sec. 8A-16. Subscriber privacy and unauthorized reception.

- (a) A franchisee must protect the privacy of all subscribers under Section 631 of the Cable Act. A franchisee must not condition subscriber service on the subscriber's grant of permission to disclose information, which, cannot be disclosed without the subscriber's explicit consent under federal law.
- (b) A person must not intercept or use any video, voice, or data signal transmissions over a cable system, unless the interception or use is authorized by the franchisee or other person having the lawful right to authorize the reception or use. A violation of this subsection is a Class A offense. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-17. Construction and use of rights-of-way.

- (a) A franchisee must use, with the owner's permission, existing poles, conduits or other facilities whenever possible. Copies of agreements for use of poles, conduits or other facilities must be filed with the County as required by the franchise agreement.
- (b) All transmission lines, equipment and structures must be installed and located to cause minimum interference with the rights and reasonable convenience of property owners.
- (c) Suitable safety devices and practices as required by local, County, state and federal laws, regulations, and permits must be used during construction, maintenance, and repair of a cable system.

- (d) A franchisee must remove, replace, or modify at its own expense any of its facilities in a public right-of-way when the County requires it to do so, to allow the County to change, maintain, repair or improve a public thoroughfare.
- (e) The franchisee must put the cable underground at its expense on streets and roads where both electrical and telephone utility wiring are underground, and must move the cable underground after initial installation when electrical and telephone utility wiring are moved underground. The franchisee must put the cable underground between a street or road and a subscriber's residence if both electrical and telephone utility wiring are underground. A franchisee may install aerial cable if either electric or telephone utility wiring is aerial, except where a property owner or resident requests underground installation and agrees to pay the additional cost over aerial installation.
- (f) A franchisee must obtain any required permits before starting construction work on public and private property and must restore the public and private property to their former condition after construction is completed. The County, or private property owner may, after prior notice to the franchisee, repair any damage done by the franchisee at the franchisee's expense if restoration is not satisfactorily performed within a reasonable time.
- (g) Subject to the supervision and direction of the County, a franchisee may trim trees within public rights-of-way at its own expense as necessary to protect its wires and facilities. A franchisee may trim trees on private property with the consent of the property owner.
- (h) At the request of any person holding a valid building moving permit and upon sufficient notice, the franchisee must temporarily raise, lower or cut its wires as necessary to facilitate a move. The direct expense of these temporary changes, including standby time, must be paid by the permit holder. The franchisee may require payment in advance. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-18. Technical standards.

- (a) Any cable system constructed within the County must meet or exceed the technical standards in this Chapter, the franchise agreement, and the franchisee's application. All video channels in a cable system must be capable of delivering National Television Systems Committee (NTSC) color and monochrome standard signals and designed to provide picture quality of TSO grade 2 or better and superior reliability. For purposes of this Chapter, a TSO grade 2 picture is one with barely visible interference that does not detract from viewing. All television signals transmitted on a cable system must include any closed captioning information for the hearing impaired. Antennas, supporting structures, and outside plant used in the system must comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plant.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-19

- (b) All construction, installation and maintenance must comply with the National Electrical Safety Code, the National Electric Code, the Bell System Code of Pole Line Construction, all state and local regulations, and accepted industry practices.
- (c) The franchisee must perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this Chapter, the franchise agreement, the FCC requirements at the stages of construction specified in the franchise agreement. The franchisee must provide the proof of performance test results promptly to the County.
- (d) The County may require periodic proof of performance tests to be performed at the expense of the franchisee after the completion of construction. The franchisee must provide the test results promptly to the County.
- (e) The franchisee must advise the County when a proof of performance test is scheduled so that the County may have an observer present.
- (f) A franchisee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-19. Security deposit.

- (a) The franchisee must post with the County, and maintain at all times during the term of the franchise, a cash security deposit in the amount specified in the franchise agreement. The County must hold the security deposit as security for:
 - (1) faithful performance of all applicable provisions of law and the franchise agreement;
 - (2) compliance with all orders, permits, and directions of the County; and
 - (3) payment by the franchisee of any claims, liens, or taxes due to the County because of the construction, operation or maintenance of the system.
- (b) The County must place any security deposit in an interest bearing account such as those in which the County general funds are located. The interest will accrue to the benefit of the franchisee but may not be withdrawn. All interest is added to and becomes part of the original security deposit during the term of the franchise.
- (c) The County may immediately withdraw an appropriate amount, including interest and penalties, from the security deposit if:

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-19

- (1) after 10 days notice the franchisee fails to pay to the County any fees or taxes due and unpaid, liquidated damages, damages, or costs or expenses that the County is compelled to pay by reason of any act or default of the franchisee in connection with this franchise; or
- (2) after 30 days notice to the franchisee, the franchisee fails to comply with any provision of the franchise that the County reasonably determines can be remedied by an expenditure of the security deposit.

The County must promptly notify the franchisee of the amount and date of any withdrawal.

- (d) Within 30 days after the County gives notice that an amount has been withdrawn from the security deposit, the franchisee must deposit a sum of money equal to the amount withdrawn. If the franchisee does not deposit the required amount within 30 days, the entire security deposit remaining may be forfeited. In addition, that failure is a violation of this Chapter for which the County may revoke the franchise or take any other enforcement action.
- (e) The security deposit is the property of the County if the franchise is revoked. The County must return the security deposit to the franchisee after the franchise is terminated if there is no outstanding default or unpaid amounts owed to the County by the franchisee.
- (f) The rights reserved to the County with respect to the security deposit are in addition to all other rights of the County under this Chapter or other law. An action, proceeding, or exercise of a right with respect to the security deposit does not affect any other right the County may have.
- (g) The requirements of this Section may be waived only with the Council's approval. (FY 1991 L.M.C., ch. 3, § 1; 2002 L.M.C., ch. 31, § 1.)

Editor's note—2002 L.M.C., ch. 31, §§ 2, 3 and 4, state:

Sec. 2. Service-level requirements for cable modem service. The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect [March 6, 2003]. Section 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law [December 5, 2002].

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date. This Act expires on December 31, 2005.

Sec. 8A-20. Enforcement remedies.

- (a) If a franchisee violates any provision of the law or its franchise agreement, the County may take one or more of the following actions:
 - (1) impose liquidated damages in the amount, whether per day, incident, or other measure of violation, as provided in the franchise agreement. Payment of liquidated damages by the franchisee will not relieve the franchisee of its obligation to meet the franchise requirements;
 - (2) reduce the duration of the franchise on any basis the County determines is reasonable and affords the franchisee reasonable due process;
 - (3) require the franchisee to pay its subscribers or classes of subscribers in an amount and on a basis the County determines is necessary to cure the breach or default, or equitably compensate for the violation; or
 - (4) revoke the franchise under this Chapter.
- (b) In determining which remedy or remedies are appropriate under subsection (a), the County must consider the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and any other matters the County determines are appropriate.
- (c) In addition to or instead of these remedies, the County may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before initiating a remedy under this section other than revocation of the franchise, the County must give the franchisee written notice of the violations claimed and at least 10 working days to correct the violations. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-21. Performance evaluations.

- (a) Except for limited franchises, the County must hold a minimum of 3 performance evaluation public hearings during the term of each franchise. The County Executive may determine the times for the hearings and the issues that the franchisee must address in the hearings.
- (b) The County may hold performance evaluation public hearings for limited franchises as determined by the County Executive. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-22. Renewal of franchise.

- (a) If a franchisee initiates a formal franchise renewal process under Section 626(a) — (g) of the Cable Act, the franchisee must notify the County, and each participating

municipality, at least 30 months and no more than 36 months before the franchise expiration date. When the County receives a notice from the franchisee, or at any time at the County's own initiative, the County must take the following actions:

- (1) The County must review and evaluate the future cable-related community needs and interests and the franchisee's past performance. The review and evaluation must include opportunity for public comment.
 - (2) On completion of the review and evaluation, the County must notify the franchisee that it may file a renewal application. The notice must specify the information to be included in the renewal application and the deadline for filing the application. The filing deadline must not be earlier than 30 days after the date of the notice. If the franchisee does not submit a renewal application by the specified date, the franchise may not be renewed under this subsection.
 - (3) The County must hold one or more public hearings on the renewal application when the application is received or provide some other procedure for public comment on the application.
 - (4) After the public hearing or comment period, the County Executive must recommend to the Council that it either:
 - (A) renew the franchise, subject to the negotiation of a franchise agreement satisfactory to the County and the franchisee; or
 - (B) issue a preliminary decision that the franchise should not be renewed.
 - (5) The Council's action under paragraph (a)(4) must be taken within 4 months of the date of the renewal application notice to the franchisee under paragraph (a)(2).
- (b) In considering a renewal application, the County must consider whether:
- (1) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
 - (2) the quality of the cable operator's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs (but without regard to the mix, quality, or level of cable services or other services provided over the system);
 - (3) the cable operator has the financial, legal, and technical ability to provide the services, facilities, and equipment in its proposal; and

MONTGOMERY COUNTY CODE
Chapter 8A

- (4) the cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting the needs and interests.
- (c) If a preliminary decision is made that a franchise should not be renewed, at the request of the franchisee or on its own initiative, the County must commence an administrative proceeding under Section 626(c) of the Cable Act. A hearing must be held under Section 2A-8 of this Code. The burden of proof is governed by the Cable Act. The hearing officer must issue a recommended decision consistent with the Cable Act. Parties to the hearing and the public must have 30 days after the recommended decision is issued to comment. The County Executive must recommend that the Council grant or deny an application within 30 calendar days after the deadline for receipt of comments.
- (d) The Council must hold a public hearing on a renewal application. After the public hearing, the Council must consider all of the evidence, either grant or deny the renewal application by resolution, and give the reasons for its determination in the resolution.
- (e) The Council must hold a public hearing on any negotiated franchise agreement prior to final Council action on the franchise. This may be done in conjunction with the public hearing held under subsection (d).
- (f) Notwithstanding subsections (a) through (c) in this section, a franchisee may submit a proposal for renewal of a franchise under 626(h) of the Cable Act. The County must hold one or more public hearing or provide some other procedure for public comment on the proposal. After the public hearing or comment period, the County Executive must recommend that the Council grant or deny the franchise renewal and the terms and conditions of any recommended renewal.
- (g) The renewal of a franchise is not effective until the franchisee has paid the renewal fee. The County must notify the franchisee of the amount of the renewal fee and how the fee is calculated when the County approves the renewed franchise agreement. The renewal fee must not exceed the County's costs of the renewal process, less the renewal filing fee.
- (h) If the County denies the renewal of a franchise, the County may, on the recommendation of the County Executive and with the approval of the Council, acquire ownership of the cable system or transfer ownership of the system to another person. Any acquisition or transfer under this subsection must be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.
- (i) If the County does not renew a franchise and the County does not buy the cable system, the County may require the former franchisee to remove its facilities and equipment. If the former franchisee fails to do so within a reasonable period of time, the County may remove the facilities and equipment at the former franchisee's or the surety's expense or at the expense of both. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-23. Transfers.

- (a) A transfer of a franchise, or a transfer of an interest in a franchisee that results in a change in ownership interest of a franchise of 5 percent or more, must not occur without prior approval by the County. However, a transfer of an interest to a person who already holds an ownership interest of 25 percent or more does not require prior County approval if transfer of a franchise does not occur. A transfer of a franchise will not be approved by the County when the transferor has held the franchise less than 3 years unless the County finds that the transfer is necessary and in the best interests of the County and its residents.
- (b) An application to transfer a franchise must meet the requirements of section 8A-8(b) and provide complete information on the proposed transaction, including the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber services or rates. The information required in section 8A-8(e)(1) through (3), (10) and (12) must be provided by the proposed transferee. The information required in section 8A-8(e)(4) through (9) must also be provided whenever the proposed transferee expects material changes to occur in those areas as a result of the transfer.
- (c) An application for transfer of an interest in a franchisee must describe the proposed transaction in detail and identify the interest to be transferred, the transferor, and transferee. If the proposed transferee is not a current equity owner of the franchisee, the application must include the information required by section 8A-8(e)(1) through (2).
- (d) A public hearing must be held on an application for transfer of an interest in a franchisee of 25 percent or more.
- (e) Before approving transfer of a franchise, the County must consider the legal, financial, technical and character qualifications of the transferee to operate the system, and whether operation by the proposed franchisee will adversely affect the cable services to subscribers or otherwise be contrary to the public interest. Before approving a transfer of an interest in a franchisee, the County must consider whether the transferee's interest will have any effect on the franchisee's operation of the system, the franchisee's qualifications, or the public interest.
- (f) The Council must take final action on an application for transfer of a franchise after receiving recommendation from the County Executive. The County Executive may take final action on an application for transfer of an interest.
- (g) Approval by the County of a transfer of a franchise does not constitute a waiver or release of any of the rights of the County under this Chapter or the franchise agreement.

MONTGOMERY COUNTY CODE
Chapter 8A

- (h) The County may impose a grant fee to cover its costs in excess of the filing fee in considering an application for transfer of a franchise, except for the transfer of any franchise granted prior to January 1, 1988. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-24. Revocation or termination of franchise.

- (a) A franchise may be revoked by the County on the recommendation of the County Executive and with the approval of the Council, for failure to construct, operate, or maintain the cable system as required by this Chapter or the franchise agreement, or for some other material breach of this Chapter or the franchise agreement. If the County has issued a franchise specifically conditioned upon the completion of construction or other specific obligations by a specified date under Section 8A-9(c), failure of the franchisee to complete construction or comply with other specific obligations as required will result in the automatic forfeiture of the franchise without further action by the County. However, the County, at its discretion and for good cause shown by the franchisee, may grant an extension of time. The County must give a franchisee written notice that it is in material breach of this Chapter or the franchise agreement. If the franchisee does not correct the breach within 30 days of the notice, or corrective action is not being actively and expeditiously pursued, the County may give written notice to the franchisee of its intent to revoke the franchise. The County must give the franchisee written notice of the basis for a revocation, stating its reasons. An administrative hearing must be held under the County's Administrative Procedures Act before the County may revoke a franchise. The hearing procedures may be modified by the County Executive where appropriate.
- (b) The presiding officer must issue a recommended decision after the administrative hearing. The County Executive may provide for the filing of written comments in response to the recommended decision. After the comment period, the County Executive must submit written recommendations to the Council.
- (c) The Council must hold a public hearing, and then determine by written resolution whether or not to revoke the franchise based on the recommended decision, the recommendations of the County Executive, information presented at the public hearing, and other evidence in the record. The resolution must include reasons for the Council's decision.
- (d) The County may revoke any franchise 120 days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. The County must hold a public hearing before revoking a franchise under this subsection. The County may not revoke a franchise under this subsection if, during the 120 day period:
 - (1) the assignment, receivership, or trusteeship is vacated; or

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-24

- (2) the assignee, receiver, or trustee has fully complied with the terms and conditions of this Chapter and the franchise agreement and has executed an agreement, approved by the court having jurisdiction, assuming and agreeing to be bound by the terms, and conditions of the franchise.
- (e) The County may revoke the franchise if there is a foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, by serving notice on the franchisee and the successful bidder at the sale. The franchise and all rights and privileges of the franchise will be revoked 30 days after the County serves notice under this subsection unless:
 - (1) the County has approved a transfer of the franchise; and
 - (2) the successful bidder has agreed with the County to assume and be bound by the terms and conditions of the franchise.
- (f) If the County revokes a franchise, or if for any other reason a franchisee abandons, terminates, or fails to operate or maintain service to its subscribers, the County may:
 - (1) require the former franchisee to remove its facilities and equipment at the franchisee's or surety's expense, or at the expense of both, after determining that the cable system cannot be economically maintained and operated;
 - (2) acquire ownership of the cable system at an equitable price on the recommendation of the County Executive and with the approval of the Council;
 - (3) after a public hearing, sell, assign, or transfer all or part of the assets of a cable system abandoned by a franchisee for the best price offer obtainable. However, the legal, character, financial, technical, and other qualifications of the purchaser must meet County approval. The County must pay any consideration received in excess of the County's costs, and after other creditors and subscriber claims have been satisfied, to the original franchisee. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-25. County purchase of cable system; eminent domain.

- (a) The County may, upon the recommendation of the County Executive and with the approval of the Council, acquire ownership of and operate a cable system. Any acquisition, construction, or operation of a cable system by the County is not subject to the requirements of Chapter 11B.
- (b) If the County exercises its right to purchase a cable system under this Chapter or a franchise agreement, and the County and franchisee are unable to agree on a price for the purchase of the system, the price may be determined by arbitration. Upon written notice by either the County or the franchisee to the other, the dispute must immediately be put to arbitration under the rules and procedures of the American Arbitration Association.

MONTGOMERY COUNTY CODE
Chapter 8A

The County and the franchisee will each select a qualified arbitrator. The 2 persons selected must select a third qualified arbitrator, and the 3 arbitrators constitute a panel whose decision is binding on both parties. The fees of the first 2 arbitrators must be paid by the party selecting that person. The County and the franchisee must each pay one-half of the compensation of the third person. The general costs of the proceeding must be shared equally by the County and the franchisee.

- (c) Notwithstanding any other provisions of this Chapter, the County and each participating municipality reserve the right to exercise the power of eminent domain to acquire the property of any cable system of any franchisee and to purchase, own, or operate a system so acquired consistent with state and federal law. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-26. Continuity of service mandatory.

- (a) It is the right of all subscribers to receive all available services from the franchisee if their financial and other obligations to the franchisee are satisfied.
- (b) If the franchise is terminated or transferred, the franchisee must do everything in its power to ensure that all subscribers receive continuous, uninterrupted service. The franchisee must cooperate with the County to operate the system for a transition period following termination or transfer as necessary to maintain continuity of service to all subscribers. The transition period must not exceed 12 months without the franchisee's written consent. During the transition period, the cable system must be operated under terms and conditions to which the County and the franchisee agree, or on such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and that will provide reasonable compensation to the cable operator.
- (c) If the franchisee discontinues service to its subscribers without County approval, the franchise may be terminated immediately, and the County may take possession of all facilities and property, real and personal, related to the cable system for the purpose of operating the system. The County may undertake such operation itself or authorize operation by a contractor. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-27. Unlawful solicitation or acceptance of gifts.

It is unlawful for any person to solicit, accept, or offer any gift, favor, loan, service, promise, employment, or anything of value to a County official or employee, or for a County official or employee to solicit or accept anything of value, for the purpose of influencing the grant, modification, renewal, transfer, or any other matter affecting a franchise or the administration or enforcement of this Chapter. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-28. Use of cable funds; Cable Communications Plan.

- (a) All access grants, franchise fees, and other moneys received by the County from any franchisee may be spent only under a budget approved by the Council and in accordance with the County cable communication plan.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-28

- (b) The cable communications plan must be proposed by the County Executive to the Council annually and may be amended at any time. The County Executive should consult with the franchisee and the appropriate persons in the preparation of the plan or any amendments to it.
- (c) Except as provided in subsection (f), the cable communications plan is subject to County Council approval. If the Council does not act on the plan within 75 days after receiving the plan, the plan is approved as submitted. The Council by resolution may extend the time for action on the plan for up to 15 days. The Council may approve, disapprove, or amend any plan that is subject to Council approval. The Council should consider a plan at a level of detail and according to procedures similar to the detail and procedures the Council uses to adopt the County budget. Any reference in this subsection to a cable communications plan also includes any amendment to a plan.
- (d) Upon approval of the cable communications plan or plan amendment by the Council, it must be delivered to the County Executive, who, within 10 days, may disapprove or reduce any item of expenditure. Upon disapproval or reduction of any item, the County Executive must return the plan or plan amendment to the Council with the reasons for the disapproval or reduction stated in writing. The Council may, within 30 days of receipt of the stated reasons for disapproval or reduction, approve any item by 6 affirmative votes notwithstanding the County Executive's objections.
- (e) The County Executive may amend the cable communications plan without Council approval to transfer up to 10% of a grant from one major activity to another or between activities within the plan. (FY 1991 L.M.C., ch. 3, § 1; 1998, L.M.C., ch. 10, § 1.)

Sec. 8A-29. Administration.

- (a) The County may administer and enforce a cable television franchise and franchise agreement on behalf of a municipality that adopts this Chapter and enters into an agreement with the County governing administration and enforcement. The County must consult with and coordinate its actions on major regulatory or administrative matters with the affected participating municipalities.
- (b) The County Executive must administer and enforce this Chapter and any franchise agreement, including:
 - (1) adjusting any rate of interest, fee, bond, or insurance coverage amount to comply with the highest minimum requirements of this Chapter or a franchise agreement;
 - (2) except as provided in Section 8A-31A, establishing procedures for conducting public hearings and other proceedings required by this Chapter or a franchise agreement;

MONTGOMERY COUNTY CODE
Chapter 8A

- (3) except as provided in Section 8A-31A, conducting public hearings, including designating hearing officers;
 - (4) adopting regulations under method (2) to implement federal law, this Chapter, and all franchise agreements, except that the Executive must issue regulations establishing application filing fees under method (3);
 - (5) coordinating management and operation of County government access channels;
 - (6) providing technical, programming, and operational support to public agency users of a cable system;
 - (7) planning and evaluating cable use and the development of cable services;
 - (8) approving a transfer of an interest in a franchisee;
 - (9) approving modifications of a franchise agreement that do not substantially alter material provisions of the franchise; and
 - (10) issuing requests for proposals for franchises.
- (c) Actions by the County Executive in the following matters are subject to approval and modification by the Council:
- (1) granting or renewing a franchise;
 - (2) approving transfer of a franchise;
 - (3) revoking a franchise;
 - (4) buying or selling a cable system by the County; and
 - (5) modifying a franchise agreement in a manner that substantially alters material provisions of the franchise.
- (d) Any action by the County Executive that requires approval of the Council is deemed approved by the Council unless disapproved within 60 days from the date the Council receives the County Executive's recommended action. The 60-day period does not include any week when the Council does not meet in regular session. The Council by resolution may extend the deadline for action. The Council may extend the deadline for action on an application for a new franchise for an overbuild for no more than one additional 60-day period.
- (e) The County Executive must transmit a copy of all amendments to a franchise agreement considered not to substantially alter material provisions of the franchise to the Council and each participating municipality for their information within 15 days of their execution. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 18, § 2; 2002 L.M.C., ch. 31, § 1.)

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-29

Editor's note—2002 L.M.C., ch. 31, §§ 2, 3 and 4, state:

Sec. 2. Service-level requirements for cable modem service. The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect [March 6, 2003]. Section 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law [December 5, 2002].

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date. This Act expires on December 31, 2005.

Sec. 8A-30. Municipal participation.

- (a) On behalf of the participating municipalities, the County must assure that:
 - (1) the original cable system is constructed within municipal boundaries as soon as it is constructed in adjacent areas;
 - (2) there is no discrimination against participating municipalities in the array of channels and services offered; and
 - (3) there is reasonable technical support and access channel capacity available for municipal programming.
- (b)
 - (1) The County must pay a portion of gross franchise fee revenues to each participating municipality. The portion is equal to 70 percent of the municipality's share of gross franchise fee revenues. The municipality's share is the same percentage of gross franchise fee revenues as the percentage of all cable subscribers in the County who live in the municipality. The County must retain the remaining 30 percent of the municipality's share as compensation for administering the franchise for the participating municipality and for County expenses for use of the cable system for public and educational purposes. For example, if 1 percent of all subscribers in the County live in a participating municipality, the County must pay 0.70 percent of gross franchise fee revenues to the municipality.
 - (2) The County must pay participating municipalities periodically, at least once a year, for franchise fee revenues received during the preceding period.
- (c) Any cable advisory committee or board created by the County must include a voting representative designated by the Montgomery County Chapter of the Maryland

Municipal League, the City of Rockville and the City of Takoma Park, if the advisory committee or board to be concerned with franchises or cable operations in which those entities, or their members, are participating municipalities. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 10, § 1.)

Sec. 8A-31. Cable Communications Advisory Committee.

- (a) *Established.* The Cable Communications Advisory Committee is established to provide advice and recommendations on the administration of this Chapter and any franchise agreement or application.
- (b) The Cable Communications Advisory Committee should meet quarterly or on a more frequent basis if requested by the County Executive or County Council or if the chairperson or Committee determines it necessary.
- (c) The Cable Communications Advisory Committee must include at least 13 and not more than 19 voting members appointed by the County Executive and confirmed by the Council for 3-year terms.
- (d) The membership must include one representative selected by the Montgomery County Chapter of the Maryland Municipal League; one representative selected by the City of Rockville; and one representative selected by the City of Takoma Park. The members annually must elect the chairperson and vice chairperson of the Committee. A person must not serve more than 2 consecutive terms as chairperson.
- (e) Members are subject to Chapter 19A, except that financial disclosure statements are confidential and limited to communications-related activities and interests. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 18, § 2; 2002 L.M.C., ch. 31, § 1.)

Editor's note—2002 L.M.C., ch. 31, §§ 2, 3 and 4, state:

Sec. 2. Service-level requirements for cable modem service. The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect [March 6, 2003]. Section 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law [December 5, 2002].

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date. This Act expires on December 31, 2005.

MONTGOMERY COUNTY CODE
Chapter 8A

§8A-31A

Sec. 8A-31A. Cable Compliance Commission.

- (a) *Established.* The Cable Compliance Commission is established to adjudicate subscriber complaints involving customer cable service or any other product or service.
- (b) *Membership.* The Commission is comprised of 5 voting members appointed by the County Executive and confirmed by the County Council. Each appointee must be appointed to a 3-year term. The Commission should include:
 - (1) a cable television service subscriber;
 - (2) a broadband Internet service subscriber;
 - (3) an individual with general business experience; and
 - (4) an individual with technical experience in communications.
- (c) *Officers.* The Commissioners annually must elect a chair and vice chair of the Commission. An individual must not serve more than 2 consecutive terms as chair.
- (d) *Insufficient initial quorum.* The Executive must appoint 5 members of the Commission and submit the appointments for confirmation by the Council by March 15, 2003. If the Council has not confirmed at least 3 appointees by May 15, 2003, the Cable Communications Advisory Committee established under Section 8A-31 must perform the functions of the Commission until at least 3 members of the Commission are confirmed by the Council.
- (e) *Ethics.* Each member of the Commission is subject to Chapter 19A, except that the member or prospective member must file a limited public financial disclosure statement regarding any communication-related activities and interests and a full confidential financial disclosure statement.
- (f) *Authority.* The Commission may:
 - (1) Require a franchisee to provide a refund to a complainant.
 - (2) Appoint a qualified person to mediate a case if the complainant and respondent agree to binding or non-binding mediation. A consent order resulting from mediation and approved by the Commission is an order of the Commission. If the mediator or the Commission finds that the parties are not likely to agree to a mediated consent order within a reasonable time, the Commission must decide the case.
 - (3) Order a franchisee to pay damages of up to \$1,000 to a person injured or aggrieved by the franchisee's actions. This limit applies separately to each violation.

(g) *Hearing Procedures.*

- (1) The Administrative Procedures Act (Article II of Chapter 2A) applies to a complaint filed with the Commission and governs the Commission's hearings and decisions, unless otherwise expressly provided in this Chapter. The Commission may issue procedural rules under method (2) to implement this subsection.
- (2) Before filing a complaint with the Commission, a complainant must file the complaint with the county cable administrator. If the cable administrator is unable to resolve the complaint to the complainant's satisfaction within 30 days, the complainant may file the complaint with the Commission.
- (3) If the Commission decides to conduct a public hearing on the complaint, the Commission must notify the complainant, the franchisee, the county cable administrator or the County's Chief Information Officer (CIO), and any other person that Commission rules require to be notified. Except as provided in Section 2A-9, the notice must be sent at least 15 days before the hearing. The Commission may hold a hearing at the request of any party to the complaint (which may include the cable administrator or CIO) or on the Commission's own initiative, or may decide a complaint without a hearing.

(h) *Legal representation.* The County Attorney must provide legal advice and representation to the Commission and must enforce any Commission order. The County Attorney may represent the interests of the County in any proceeding before the Commission, consistent with policies established by the Council.

(i) *Conflicting subscriber agreement.* Any provision in a subscriber agreement, whether written or oral, that conflicts with this Chapter, a franchise agreement, or any regulation or other legal requirement is unenforceable. An unenforceable provision does not affect other provisions of the subscriber agreement that can be given effect without the unenforceable provision. "Subscriber agreement" includes any agreement that the franchisee requires a subscriber to agree to as a condition of receiving cable service or any other products and services.

(j) *Fee.* The Executive may issue regulations under method (3) setting a reasonable fee for filing a complaint with the Commission. The filer must pay the fee to the County when filing a complaint. The Commission, cable administrator, or CIO may waive the filing fee upon request if the fee would be a financial hardship for the complainant. If the parties agree to a consent order after mediation, the Commission may refund the filing fee. The Commission may order the losing party to pay another party's filing fees or other reasonable expenses related to the hearing, including attorney's fees, in addition to ordering payment of damages.

- (k) *Staff and other support.* The Chief Administrative Officer must provide the services and County facilities that are reasonably necessary for the Commission to perform its duties. (2002 L.M.C., ch. 31, § 1.)

Editor's note—2002 L.M.C., ch. 31, §§ 2, 3 and 4, state:

Sec. 2. Service-level requirements for cable modem service. The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect [March 6, 2003]. Section 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law [December 5, 2002].

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date. This Act expires on December 31, 2005.

Sec. 8A-32. Community access organizations.

- (a) The County may contract with one or more community access organizations using funds from the Cable TV Special Revenue Fund or any other funds the County designates for community access in the approved County budget and under the County cable communications plan. Unless prohibited or otherwise limited under its contract with the County, the cable communications plan, or any executive regulation, a community access organization may also receive revenues from other sources.
- (b) The County may require a community access organization to perform one or more of the following functions as specified in the contract between the County and the community access organization:
- (1) manage the public access channels assigned to it by the County;